



August 5, 2015

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1275 First Street, NW
Washington, D.C. 20002

RE: Postpone Production of the CFPB Monthly Complaint Report

Dear Director Cordray

On behalf of our members, I am writing you to express our deep concern with the decision to start publishing Monthly Complaint Reports prior to the CFPB determining how such data should be normalized (including setting these data into a proper context) and whether or not any normalization strategy can address the concerns we express in this letter.

Our members (nationwide credit reporting agencies and consumer reporting agencies) are a unique population in the CFPB database because they do not have an existing commercial relationship with consumers. Therefore, we believe that the Monthly Complaint Reports currently being published using the raw complaint data from the CFPB database inaccurately reflect the complaint volume and trends associated with our members for reasons stated below.

1. Allowing Complaints Where No Dispute Was Previously Submitted to our Members
2. Complaints Misattributed to our Members
3. Complaints Submitted by Credit Repair Services Not Recognized
4. The Importance of Context

In many instances, consumers will often misidentify the actual party about which they are complaining due to the multiple parties involved in the ecosystem of credit reporting (and other types of consumer reporting agencies), thus wrongly submitting a complaint against one of our members.

We respectfully request that the CFPB postpone the production of additional reports which include individual company data until the CFPB has completed its work through its published request for information focused on determining "...best practices for 'normalizing' the raw complaint data it makes available via the Database so they are easier for the public to use and understand."¹

To continue to publish raw data at the company level is unfair and does not, to quote the CFPB's

¹ Request for Information Regarding the Consumer Complaint Database: Data Normalization, Federal Register, Vol. 80, No. 125, Tuesday, June 30, 2015/Notices, Pages 37237-37239.

own notice, "...provide consumers with timely and understandable information to help enable them to make responsible financial decisions and to enhance market efficiency and transparency." Below we provide a detailed explanation of the reasons which support our request that the CFPB postpone the production of additional Monthly Complaint Reports which include individual company data.

Complaint Inflation - Allowing Complaints Where No Dispute Was Previously Submitted to our Member

Definitions matter materially in the categorization of complaints coming through the CFPB's portal. Unlike all other industries that are within the CFPB's purview, the federal Fair Credit Reporting Act² (FCRA) establishes a detailed mechanism for consumers to use when submitting a dispute about data in their files. The CFPB examines our members' consumer services teams and is fully aware of the millions of dollars invested in working with consumers who have questions or wish to submit disputes.

Therefore, the CFPB should differentiate the disputes from the complaints submitted through its portal and track only the complaints about our members' practices following a consumer exercising his or her right under the FCRA. However, the CFPB's website design appears to actually contribute to inflated complaint numbers in a number of ways. In fact, when the CFPB first began accepting credit reporting complaints in October 2012, the intake form for credit reporting complaints included the comment "To address your issue, you must file a dispute with your credit reporting company." However, as of December 18, 2013, that comment was removed from the intake form, and consumers were no longer directed to provide credit bureaus with an opportunity to resolve their issue prior to submitting a complaint directly to the CFPB.

Further, the CFPB page³ which provides consumers with information on how to dispute errors on credit reports includes, at the top left side of the page (above the contact information for any consumer reporting agency) a "GET HELP" box suggesting the consumer submit a complaint. The CFPB will then "...forward your issue to the company..." That link takes a consumer to the CFPB complaint form. There is no suggestion that the consumer could or should first dispute directly with the consumer reporting agency or his/her creditor.

More recently, via Twitter and Facebook, the CFPB is urging consumers to submit complaints about their credit reports directly to its portal. Similar to the concern regarding the GET HELP box described above, these Facebook postings and Tweets conflate disputes with complaints. They are inflammatory and drive dispute traffic to the CFPB portal which exacerbates our concerns about complaint inflation.

Based on the CFPB's design of its portal, its form and its social media communications it would not be at all surprising to find that consumers do not distinguish between a true complaint and a dispute under the FCRA and choose to act on the CFPB's offer to forward the consumer's dispute. One of our members estimated that for the month of June 2015, 32.8% of CFPB complaints were in fact disputes (because no previous dispute of data in the consumer's file had been received), and this percentage remains fairly consistent month-over-month. This is not a difficult statistic to track because our members maintain records of disputes submitted to them directly.

² 15 U.S.C. §1681 *et seq.*

³ <http://www.consumerfinance.gov/askcfpb/314/how-do-i-dispute-an-error-on-my-credit-report.html>

We believe that, in order for the CFPB to provide accurate complaint data associated with the nationwide CRAs and other consumer reporting agencies, the social media campaign, portal and complaint form should be redesigned and tested. Specifically, consumers should not be allowed to submit a complaint if they have not first exercised their rights under the FCRA directly with one of our members. Because the portal currently allows consumers to submit complaints that are in fact disputes, the CFPB complaint database is inflated with first-look disputes and misrepresents the number of true complaints submitted about our members. Simply ensuring that consumers first exercise their right under the FCRA to submit a dispute would likely drop the aggregate number of disputes by 30% or more.

Complaint Inflation – Complaints Misattributed to our Members

Below is an excerpt from our September 22, 2014 letter of comment regarding the CFPB’s Federal Register notice regarding the disclosure of consumer complaint narrative data. This excerpt provides compelling evidence supporting our view that the CFPB should not continue to publish its Monthly Complaint Reports and also why the Bureau should discontinue its reporting on individual companies, including our members.

“CDIA members operate third-party databases regulated by the Fair Credit Reporting Act. The FCRA establishes one set of duties for consumer reporting agencies and a separate set of duties for those who furnish data to consumer reporting agencies. These duties focus on, for example, accuracy of data and procedures for processing a consumer’s dispute regarding data. Though the FCRA establishes separate duties when a consumer has a potential problem with how his or her lender reported data to a credit bureau, the consumer submits this dispute to the credit bureau and the lender (data furnisher) operates in the background to investigate the dispute. The consumer, therefore, could perceive a problem in the dispute process to be the result of the credit bureau’s actions when it is actually the fault of the furnisher.

In a review of the FTC’s 2012 publication of research on the accuracy of credit reports, CDIA found that 88% of the complaint types identified by consumers pertain to the manner in which the data furnisher reported their accounts and not to the manner in which the consumer reporting agency matched the account to a credit report. This is not surprising since lenders are very successful in reporting the correct identifying data about their customers which, in turn, allows consumer reporting agencies to load data accurately. Often consumers were disputing balances, which strongly suggest that their lenders were reporting accurate information, but their customers had seen a more recent statement regarding their account.”

In this same letter CDIA also discussed finding a similar pattern regarding consumer complaints when it worked with its members to review more than 1000 consumer complaints submitted through the CFPB’s complaint portal. Though all of the more than 1000 disputes reviewed were attributed to our members, the percentage of them that were actually about how their lenders reported data was 77%. Attributing a dispute to the party that gave rise to the dispute is uniquely difficult and often impossible via publicly-disclosed data drawn from the CFPB complaint portal and the portal is not designed to provide consumers with sufficient guidance to minimize the misattribution of disputes.

We were deeply disappointed that the CFPB’s response to our thoughtful explanation of the problem of misattribution was to state in its comments accompanying the final rule that “...the Bureau empowers the consumer to elect whom to submit a complaint against (dependent, as noted, on an existing commercial relationship).” An “existing commercial relationship” giving

rise to a complaint is more accurately described as concerning only those instances when consumers have first submitted disputes directly to a consumer reporting agency and only then chosen to submit a complaint about some aspect of how these disputes were handled or the results therein. Were the CFPB to address our concerns regarding misattribution the CFPB's raw data on our members would be more accurate; and the instances in which our members are incorrectly named in consumer complaints would likely drop by more than 70%.

Complaint Inflation – Complaints Submitted by Credit Repair Services Not Recognized

It is our understanding that the CFPB's portal no longer allows our members to identify to the CFPB that an incoming complaint submitted by a consumer through the CFPB portal is a result of credit repair. We are disappointed in this decision and urge the CFPB to reverse it. Our members, law enforcement agencies and consumer advocates all recognize the harm to consumers that results from fraudulent credit repair services. In fact, in a June 16, 2015 press release⁴ the Consumer Federation of America stated the following regarding credit repair:

Furthermore, although consumer protection officials agree that credit repair companies offer poor value to consumers, two-fifths of respondents (40%) believe that these companies are always or usually helpful in correcting credit report errors (or in taking other measures to improve one's credit scores).

Rather than ignoring the fact that credit repair services are frequently engaged in fraud, the CFPB would be better served by advising these consumers to seek the help of a credit counselor and to point them to the Federal Trade Commission's advice on how go about selecting one.

Because the CFPB no longer allows our members to notify the CFPB of credit repair activity, the aggregate complaint data on a per-company-basis is inflated and likely populated by fraudulent attempts.

The Importance of Context

Beyond the extremely serious problem of complaint inflation discussed above, the CFPB's lack of desire to first complete its dialogue about how to normalize data (and whether or not normalization will address material concerns) compounds the harm and unfairness of publishing the names of individual companies. We believe that a discussion of normalization should include the question of how to set raw data into a proper context and efforts to provide a proper context should be tested before resuming the publication of monthly reports and the inclusion of individual company data. Below is another excerpt from our September 22, 2014 letter of comment to the CFPB regarding the CFPB's Federal Register notice regarding the disclosure of consumer complaint narrative data. It is a compelling explanation of the serious problem of presenting raw data and using such data to publish Monthly Complaint Reports:

"In the CFPB's Semi-Annual Report issued May 2014, the Bureau reports that in May 2013 they added to their public disclosure complaints on credit bureaus dating back to October 22, 2012, and has collected 29,600 complaints.⁵ See the chart below for examples of how the CFPB could put these complaints into context:

⁴ <http://www.consumerfed.org/news/906>

⁵ Semi-Annual Report of the Consumer Financial Protection Bureau, October 1, 2013 – March 31, 2014, 19, 33.

<i>Context Statistic</i>	<i>% of Consumers Complaining Relative to a Context Statistic</i>
<i>40,000,000 consumers obtain a copy of their credit file.⁶</i>	<i>0.074%</i>
<i>Each nationwide consumer reporting agency has 1.3 billion active tradelines.⁷</i>	<i>0.0023%</i>
<i>CDIA estimates that a total of 3 billion consumer credit reports are sold annually.</i>	<i>0.0009%</i>

To its credit, the FTC has attempted to include context in their reports on complaints. Consider the following excerpt from their 2009 report on the Fair Debt Collection Practices Act:

'The Commission recognizes that third-party collectors contact millions of consumers each year. The number of consumer complaints the FTC receives about such collectors is therefore but a small percentage of the overall number of consumers contacted by debt collectors.'⁸

The CFPB does not provide context in their current reports on complaints and publishing narratives only exacerbates the unfairness and misrepresentative nature of the CFPB's presentation of complaint data. In fact there is no means by which a consumer narrative can be put into a fair context relative to a company's practices. It convicts even when a CFPB examiner's review of the same company would find no fault with its compliance with law. The irony here is that the examiner's report cannot, for good reasons, be published and thus the company is left to try and defend itself complaint narrative by complaint narrative. This is unfair and does not advance the goal of better-informed consumers."

We believe the chart above comparing complaints to various market data provides an example of the type of context that should be considered when presenting complaint data about our members on an industry or individual company level. Proper context should also consider the fact that where an industry is highly concentrated in terms of the number of competitors or where their products are used in billions of transactions each year. In these cases (both are true for our members) it is almost inevitable that the raw number of complaints associated with individual corporate names will appear large. But when these data are set into a fair and proper context the company names are not worthy of being highlighted in a report. Further reports should include clear and conspicuous disclaimers about the accuracy and other recognized limitations of the data.

In conclusion, we believe that it is only fair for the CFPB to postpone issuing Monthly Complaint Reports and in particular, presenting any data on individual companies, until a thorough review of the fairness of publishing complaints at the level of companies is evaluated, including whether or not any normalization strategy (including setting complaints into a proper context) can address the inherent unfairness of publishing raw data at the industry or company level. Further, we believe that a complete review of how complaints about our members are handled is in order.

⁶ Key Dimensions and Processes in the U.S. Credit Reporting System: A review of how the nation's largest credit bureaus manage consumer data, Consumer Financial Protection Bureau, December 2012, 4.

⁷ Id., 14.

⁸ FTC FDCPA Report, 4.

This review should include: a) how to identify and exclude from the CFPB database complaints submitted by consumers where they did not first submit a dispute directly to a given consumer reporting agency, b) determining how to identify and manage complaints submitted by credit repair, and c) the proper categorization of complaints about how furnishers supply data versus complaints about our members' practices. Any one of these factors may have a significant impact on the complaint statistics of our members, but certainly in combination, these factors could have a material and exponential effect on the reporting and the Bureau's ability to "...provide consumers with timely and understandable information to help enable them to make responsible financial decisions and to enhance market efficiency and transparency."

Sincerely,

A handwritten signature in black ink, appearing to read "Stuart K. Pratt", written in a cursive style.

Stuart K. Pratt
President & CEO